



Yale Law School

THE ARTHUR LIMAN CENTER
FOR PUBLIC INTEREST LAW

March 10, 2021

Senator Mae Flexer & Representative Daniel Fox, Co-Chairs
Senator Rob Sampson & Representative Gale Mastrofrancesco, Ranking Members
Government Administration and Elections (GAE) Committee
Legislative Office Building, Room 2200
Hartford, CT 06106

**Re: Testimony in Support of H.B. No. 6578:
(Raised) An Act Concerning Participation in the Electoral Process**

Dear Senators Flexer and Sampson, Representatives Fox and Mastrofrancesco:

The Arthur Liman Center for Public Interest Law at Yale Law School writes in support of H.B. No. 6578 – which will restore voting rights to approximately 3,000 returning citizens who are currently disenfranchised even after they are released from prison.¹ This bill is critical to eliminating unwise and unjust exclusions to civic participation, which harm communities and suppress the voices of people directly affected by the criminal legal system. Research has documented the importance of re-enfranchisement both for civic participation and public safety.² We thank you for your commitment to restoring the franchise for those on parole in Connecticut.

We also write to bring to your attention another facet of the problem of voting for people in detention. We estimate that there are between 3,000 and 4,000 eligible voters jailed in the State of Connecticut who – despite having the right to vote under Connecticut law – are unable to cast a ballot. As you know, people who are detained pre-trial or serving time for a misdemeanor have the right to vote.³ As of March 5, 2021, 3,373 individuals were held pre-trial (and hence, presumed innocent) and another several hundred people were serving a misdemeanor sentence.⁴ From the work that the Liman Center and the Civil Justice Clinic at Quinnipiac University School of Law did last fall, when about 3,400 people were in those categories, we learned first-hand (as we detail below) how hard it is to cast ballots while in detention.

A combination of administrative complexities, needless delays, and information gaps make it extraordinarily difficult for eligible voters in Connecticut correctional facilities to participate in the electoral process. These individuals are disenfranchised not by law, but by a voting system that does not

¹ See *Correctional Community Program Daily Population Count By Community Program*, CT DATA (Mar. 5, 2020), available at [hdata.ct.gov/Public-Safety/Correctional-Community-Program-Daily-Population-Co/5d7h-at3x](https://data.ct.gov/Public-Safety/Correctional-Community-Program-Daily-Population-Co/5d7h-at3x) (identifying that 3,029 individuals are on parole in the State of Connecticut).

² See, e.g., Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 196 (2004).

³ C.G.S.A. 9-45(b); 9-46a(a).

⁴ See *Correctional Facility Daily Population Count By Facility*, CT DATA (Mar. 5, 2020), available at data.ct.gov/Public-Safety/Correctional-Facility-Daily-Population-Count-By-Fa/n8x6-s299.

work. To right this wrong, we urge the General Assembly to take immediate action to streamline the processes through which these eligible voters can register to vote and submit their ballots while they are in detention. The goal is to put in place an effective and long-term statewide system to ensure that all enfranchised persons can exercise their right to vote.

Below, we provide more information on the problems and the solutions.

Burdens on Voting for Eligible, Incarcerated Voters

Under the current system, few people in detention can receive or cast ballots. For starters, many citizens who are incarcerated in Connecticut correctional facilities do not know that they are eligible to vote. And those who do know face hurdles when seeking to register and to cast their ballots.

1. **Challenges in Registering to Vote.** While most citizens can go to their town clerk's office and register to vote, or can register to vote online, people in detention cannot. Instead, registering to vote from correctional facilities can require *four separate mailings*: a written request for a registration application, a return mailing from the registrar with the registration application, a send-out of the completed application, and a return confirmation that the voter is registered.

These time-consuming backs and forths impose weeks of delay and, under current problems with the U.S. mails, raise the possibility of mail being lost in transit. Furthermore, voter registration requires proof of residence and a form of identification. Such forms of identification are often difficult, if not impossible, for detained populations to access unless they are assisted by personnel from the Department of Correction (DOC).

2. **Difficulties Obtaining and Returning Absentee Ballots.** After eligible voters in state custody successfully register to vote, they must then request an absentee ballot in writing. This process includes two additional mailings. If an incarcerated elector is lucky enough to learn about and be able to register to vote in the two months before an election, they likely will not have time to request and return their ballot in time for it to be counted.

Lessons Learned from the Liman Center's Detained Voter Project

The concerns we have outlined are not abstract but based on what we learned last fall during the 2020 General Election. Using public records, the Liman Center and the Civil Justice Clinic at Quinnipiac University School of Law identified 3,400 people in Connecticut jails who met the criteria for voter eligibility. In a few short weeks before the General Election, we mailed these people information and helped 134 people register to vote by mail. Shortly before the election, we were able to work with the DOC to ensure that voters would get forms without using the mails. We helped about 200 people in detention have their ballots counted in the November 2020 election. This is a small fraction of the total number of those eligible, but a much larger number than Connecticut has seen in the past. Connecticut could do much better.

From a follow-up survey to voters in Connecticut correctional facilities, we heard from 75 incarcerated voters and learned from their experiences. As one prospective voter explained, "*Unfortunately, I received my absentee ballot the day after election day, which obviously made it impossible to vote.*" Another voter noted a similar experience after attempting to vote: "*I never received any type of ballot and never got to vote. I feel like my rights were suppressed.*" Other voters reported hearing erroneous information from staff or delays in receiving a response. When handing out voter forms, one detained voter reported that he was told by

staff: “*I don’t know why they sent this because inmates are not allowed to vote.*” Another voter indicated having written “*the counselor 3 times asking questions*” before receiving a response.

Practical Legislative Solutions to Remove Vote Burdens and Improve Voter Access.

Connecticut can and should do more to ensure that eligible incarcerated voters are able to participate in the electoral process. When the state detains voters and prevents them from accessing the polls—which is their legal right—it becomes the state’s responsibility to facilitate voter access. This is a constitutional imperative as much as it is a moral one. Connecticut cannot burden incarcerated voters with a system that blocks their access to the ballot.⁵

A few straightforward changes to Connecticut law could ensure that all eligible voters in detention can cast their ballots.

1. **Provide Voter Registration Forms & Registration Assistance.** The DOC should provide voter registration forms to people when they first enter facilities and help them register then. The Department should work with the Secretary of the State to provide clear information about the right to vote and straightforward instructions explaining the voter registration and absentee voting processes for incarcerated individuals.
2. **Automatic Absentee Ballot Delivery.** The Secretary of the State and the DOC should compare records to identify all registered voters who are incarcerated in advance of an election. Absentee ballots should then be automatically sent to these voters in correctional facilities well in advance of election day.
3. **Emergency Voting for Detained Electors.** For those electors who are detained for the first time in the few days leading up to an election, elections staff should be authorized to drop off and pick up absentee ballots from local correctional facilities before Election Day.

We call on the Connecticut General Assembly to adopt these measures which are necessary to make voting accessible for people in Connecticut correctional facilities. **We therefore suggest that in addition to the important expansion of the franchise in H.B. No. 6578, the bill also be amended to protect the pre-existing voting rights of detained individuals.** We write to offer our help in doing so, and we enclose potential language that would accomplish these ends. Further, we also attach a one-page information sheet that summarizes some of the points made in this testimony.

⁵ See, e.g., *Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 666 (6th Cir. 2016) (increasing the time needed to vote for mainly African-American communities imposed a burden that, while “not severe,” was also “not slight,” and was constitutionally unjustifiable); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (“However slight the burden [imposed on voters] may appear, it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation”); see also Dana Paikowsky, *Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, 54 HARVARD CIVIL RIGHTS & CIVIL LIBERTIES LAW REVIEW 829, 856-58 (2019) (noting the equal protection implications of treating all eligible voters equally).

We thank the General Assembly for its continued commitment to securing the voting rights of all Connecticut citizens, and to pursuing new avenues to ensure access to voting for those who are or have been incarcerated.

Thank you for your consideration of this letter.

Sincerely,

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**AN ACT FACILITATING VOTING BY PERSONS WHO ARE INCARCERATED IN
CONNECTICUT CORRECTIONAL FACILITIES**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2021*) (a) As used in this act:

(1) “Commissioner” means the Commissioner of the Department of Correction or any employee or agent of the Department of Correction.

(2) “Correctional facility” means a correctional institution, community correctional center or other facility administered by the Commissioner.

(3) “Person who is incarcerated” means a person (or persons) committed to the custody of the Commissioner for confinement in a correctional facility.

(4) “Secretary of the State” has the same definition as in section 9-3.

(5) “Custodial roster” means a list of all persons who are incarcerated at correctional facilities in the State of Connecticut. Such a list shall at a minimum include each person’s: (1) full name; (2) date of birth; (3) residential address; and (4) the address of the correctional facility at which they are located.

(6) “State-wide centralized voter registration system” has the same definition as in section 9-50b.

(7) “List of incarcerated electors” means a list of all eligible persons registered and eligible to vote who are incarcerated at a correctional facility. Such a list shall at a minimum include each person’s: (1) full name; (2) date of birth; (3) residential address; and (4) the address of the correctional facility at which they are located.

(8) “Release roster” means a list of all persons who, during the preceding calendar month, have been discharged from confinement. Such a list shall at a minimum include each person’s: (1) full name; (2) date of birth; (3) residential address; and (4) the address of the correctional facility at which they were located.

Sec. 2. (NEW) (*Effective July 1, 2021*)

(a) The Secretary of the State shall distribute to the Commissioner up-to-date written materials detailing the qualifications and rights of persons who are incarcerated to vote if the person is an elector, as defined in section 9-1, and detailing the process of absentee voting from a correctional facility.

(b) Not later than seven days after a person is incarcerated in a correctional facility, either initially or by transfer from another correctional facility, the Commissioner shall provide that person: (1) the written materials described in subsection (a) of this section; and (2) a mail-in voter registration application form described in 9-19h(b) of the general statutes. The Commissioner shall also inform that person of the right to seek voter registration assistance as outlined in subsection (c) of this section.

(c) Upon request by any person who is incarcerated, the Commissioner shall provide that person with any available identifying information required to complete voter registration under section 9-23r, including but not limited to: (1) a valid Connecticut motor vehicle operator's license number or a Department of Motor Vehicles-issued non-driver identification number; (2) the last four digits of the individual's Social Security number; or (3) a government document showing the name and address of the elector in the State of Connecticut. Such identifying information shall be considered available if it is contained in the person's inmate master file maintained the Commissioner under section 18-81.

(d) The Commissioner shall collect all completed voter registration forms from persons who are incarcerated and shall submit them forthwith to the Commissioner of the Department of Motor Vehicles, who shall process them pursuant to section 9-19h(b). When within twenty-one calendar days of the deadline for mail-in voter registration applications under section 9-23g(d), the Commissioner shall submit any completed voter registration forms within one calendar day of collection. Such collection and submission, which may be by mail, shall be at no cost to the person who is incarcerated.

(e) In lieu of the requirements of subsection (d) of this section, provided that the person who is incarcerated has a valid Connecticut Driver's license number or a Department of Motor Vehicles-issued non-driver identification number, the Commissioner may: (1) provide computer access to enable a person who is incarcerated to register to vote using the online voter registration system established under section 9-19k of the general

statutes; and (2) assist a person who is incarcerated in completing an online voter registration application.

Sec. 3. (NEW) (*Effective July 1, 2021*) (a) The Commissioner shall, on or before the eighteenth day but no earlier than the twenty-first day before an election, transmit to the Secretary of the State: (1) a complete custodial roster; and (2) the list of disqualified electors required to be kept by section 9-45.

(b) The Secretary of the State, within three calendar days of receipt of the information required under subsection (a), shall compare the custodial roster and the list of disqualified electors submitted by the Commissioner with the state-wide centralized voter registration system to determine which persons who are incarcerated are registered and eligible to vote. The Secretary of the State shall immediately thereafter transmit to all town clerks the complete list of incarcerated electors, arranged in alphabetical order of the municipality where the electors are registered.

(c) Upon receipt of the list of incarcerated electors under subsection (b), a town clerk shall deem each person who is incarcerated to be eligible to vote by absentee ballot pursuant to section 9-135(a)(2), and shall mail an absentee voting set to each person in accordance with sections 9-140(e)-(i) at the address of the facility at which they are located.

(d) For all individuals who are incarcerated but not included on a custodial roster submitted to the Secretary of the State, having become incarcerated after the Commissioner submits the custodial roster but before the day of an election, the Commissioner shall immediately: (1) inform the individual in writing of the opportunity to apply for an absentee ballot and instructions for completing the application for an absentee ballot; (2) provide an application for an absentee ballot as described in section 9-139a of the general statutes; and (3) make available (A) a list of addresses for all town clerks in the State of Connecticut; and (B) a postage pre-paid envelope for the mailing of any absentee ballot application. The Commissioner shall perform the duties set forth in this subsection no later than one calendar day after initial intake into the correctional facility.

(e) Upon receipt of an absentee ballot application from a person who lists a correctional facility as their mailing address and who is not already on the list of incarcerated electors provided by the Secretary of the State in the days leading up to an election, a town clerk

may either: (i) mail an absentee ballot set directly to the applicant at the applicant's place of confinement; or (ii) identify a designee for the purpose of delivering the ballot to the confined elector and returning it to the town clerk, unless the applicant is confined to a correctional facility within their municipality, in which case the town clerk shall identify a designee for the purpose of delivering the ballot to the confined elector and returning it to the town clerk.

Sec. 4. Subsection (a) of section 9-19h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(a) The Department of Social Services, the Labor Department and the Department of Motor Vehicles shall make voter registration information and materials available to the public. Such information and materials shall be placed in public areas of the offices of such departments. The State Library and the libraries of the state's public institutions of higher education shall also make such information and materials available to users of the libraries. The Department of Correction shall also make such information and materials available to persons who are incarcerated. The Secretary of the State shall provide such departments, such libraries and any libraries open to the public with suitable nonpartisan literature, materials and voter registration application forms authorized under sections 9-23g, as amended by this act, and 9-23h. The secretary shall also provide to the Department of Social Services, the Labor Department, [and] the Department of Motor Vehicles and the Department of Correction any furniture needed to display such literature, materials and forms.

Sec. 5. Subsection (k) of section 9-140 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to (A) a person who is the designee of an applicant, or (B) the Commissioner of the Department of Correction with regard to the provision of absentee ballot applications under section 4 of this act to persons who are incarcerated.

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such list with the town clerk prior to the date of the primary,

election or referendum for which the applications were so distributed. Such requirement shall not apply to the Commissioner of Correction with regard to the provision of absentee ballot applications to persons who are incarcerated.

(3) Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

Sec. 6. Subsection (m) of section 9-140 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(m) The Secretary of the State shall conspicuously post on the Secretary of the State's web site, adjacent to the absentee ballot application form available for downloading, a notice that the application may be downloaded by a person only for (1) the person's own use, (2) the use of a member of the person's immediate family, [or] (3) the use of a designee of the applicant, or (4) the use of the Commissioner of the Department of Correction. The notice shall also contain an advisory statement concerning the requirements of subsection (k) of this section.

Sec. 7. Subsection (b) of section 9-140b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*).

As used in this section and section 9-150c, "designee" means (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such designation, (3) the Commissioner of the Department of Correction with regard to absentee ballots returned by applicants who are incarcerated in correctional facilities or (4) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.

Sec. 8 (NEW) (*Effective July 1, 2021*) The Commissioner shall establish, at minimum, one location within each correctional facility where persons who are incarcerated may complete any voter registration form, absentee ballot and any other related paperwork in private.

Sec. 9. (NEW) (*Effective July 1, 2021*) The Commissioner shall, on or before the fifteenth day of each month, transmit to the Secretary of the State a release roster identifying all persons who have been discharged from confinement. The Secretary of the State shall transmit the release roster to the registrars of voters of each municipality, who shall use the release roster to identify any persons previously registered to vote in that municipality. Such registrar shall immediately restore the person's electoral privileges pursuant to section 9-46a and notify the elector at the elector's home address.

Sec. 10 (NEW) (*Effective July 1, 2021*) The Department of Correction shall:

- (a) Maintain a log of all incoming correspondence from the Secretary of State, the State Elections Enforcement Commission, any town clerk, and any registrar of voters to persons who are incarcerated.
- (b) Post all outgoing mail from persons who are incarcerated to the Secretary of the State, the State Elections Enforcement Commission, any town clerk, and any registrar of voters without unnecessary delay.
- (c) Deliver all incoming mail from persons who are incarcerated to the Secretary of State, the State Elections Enforcement Commission, any town clerk, and any registrar of voters to any person who is incarcerated without unnecessary delay.
- (d) Maintain a log of all voter registration applications supplied directly to persons who are incarcerated by the Department of Correction indicating the date such items were provided to a person who is incarcerated.
- (e) Maintain a log of all absentee ballots completed by persons who are incarcerated and given to staff or agents of the Department of Correction to be posted indicating the date such items were received and posted.

Sec. 11 (NEW) (*Effective July 1, 2021*) (a) The Commissioner, not later than fourteen days after any election or referendum, shall file a written report with the Secretary of the State, detailing the actions taken under this act, in a form prescribed by the Secretary of the State. The Commissioner shall track and include in the report any documented complaints or grievances, which shall be anonymized, from persons who are incarcerated related to their efforts to register or to vote. The report shall be a public record.

(b) The Secretary of the State shall issue a report, not less than six months but not more than ten months, following any election. Any such report shall include information on:
(1) the number of persons incarcerated who were eligible to vote at the time of the election; (2) the number of persons incarcerated who requested to register to vote and

the outcome of those requests in each municipality, including the reason for rejection if applicable; (3) the number of persons incarcerated who requested an absentee ballot and the outcome of that request in each municipality, including the reasons for rejection if applicable; and (4) each municipality's policies and practices regarding outreach to eligible incarcerated electors if applicable. The report shall be a public record.

Sec 12. (NEW) (*Effective July 1, 2021*) (a) The Secretary of the State and the Commissioner shall jointly study registration and voting in correctional facilities by those eligible to vote. The study shall be conducted in collaboration with registrars of voters, town clerks, and the Connecticut Sentencing Commission as established by section 54-300. Such study shall include, but not be limited to, consideration of and recommendations for: (1) a process for informing pretrial detainees and persons convicted of a misdemeanor that they are eligible to register and vote; and (2) procedures to facilitate voter registration and absentee voting in correctional facilities. Not later than October 1, 2021, the Secretary of the State and the Commissioner shall report their findings and recommendations to the joint standing committees of the General Assembly having cognizance of matters relating to elections and correctional facilities. The Secretary and the Commissioner shall conduct the study within available appropriations.

Voting from Jail in Connecticut: Legally Permitted, Practically Impossible

Simple Solutions Could Ensure Voters' Rights

Thousands of eligible voters in Connecticut's jails and prison system could not exercise their right to vote in 2020 because they had no way to get and return ballots in time for Election Day.

Even with extraordinary outreach efforts and quick fixes before the 2020 election, Connecticut currently has no effective, long-term, statewide system to be sure incarcerated eligible voters can cast their ballots.

The 2021 legislative session is an opportunity to make that change. Several proposals to reform voting are in the works. Because the Liman Center at Yale Law School reached out to 3,400 eligible voters in detention last fall, we saw the roadblocks to voting firsthand and learned the steps needed to remove them.

The Current System Prevents Eligible Voters from Voting

Under Connecticut law, people who are detained pre-trial or serving time for a misdemeanor have the right to vote. People with felony convictions are eligible to vote if they are not currently serving a felony sentence or on parole from that sentence. Yet, under the current system, few people in detention can get or cast ballots.

What are the roadblocks?

- Registering to vote, getting ballots, and returning them depends on mail. For the 2020 election, the Secretary of the State advised Connecticut voters not to return ballots by mail. Even in better times, mail is slow in jails and prisons.
- The process for voting has many steps – up to *seven times* back and forth *by mail* with a town clerk – from requesting a registration form to returning a ballot.
- People in the jail and prison system have no alternatives to using mail. They can't pick up forms in person. Last fall, there were no easy routes to internet access to get information and forms online.
- People in the jail and prison system often do not have identification documents with them to establish eligibility. The voter registration form recommends sending copies of these documents.

How were some barriers lowered last fall?

Using public records, the Liman Center at Yale Law School and Civil Justice Clinic at Quinnipiac University School of Law identified 3,400 people in Connecticut DOC facilities who met the criteria for voter eligibility. We mailed them voting information and helped 134 people register to vote by mail. More than 200 people in total returned ballots. Later, we learned that others also wanted to vote but could not get materials turned around in time. As one person explained:

“Unfortunately, I received my absentee ballot the day after election day, which obviously made it impossible to vote.”

Connecticut Can Fix These Problems

A few straightforward changes to Connecticut law – under consideration now – could ensure that all eligible voters could cast their ballots from jails and prisons.

1. The Department of Correction (DOC) can provide voter registration forms to people when they first enter facilities and help them register then.
2. The Secretary of the State and DOC can compare records to find voters who are incarcerated. Absentee ballots could then be automatically sent to voters in the jail and prison system.
3. To avoid mail, arrangements can be made for ballot drop boxes. In addition, elections staff can pick up ballots from Department of Correction facilities before Election Day.

The bottom line: new legislation is needed.